**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GARY BANKS,	)	
	)	
Plaintiff,	)	Civil Action No. 1:08cv04
	)	
v.	)	Judge Cercone
	)	Magistrate Judge Lenihan
LT. MARK MOZINGO, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

AND NOW, this 18th day of March, 2010, after de novo review of the record and upon due consideration of [106] the magistrate judge's report and recommendation filed on February 26, 2010, and [108] plaintiff's objections thereto, IT IS ORDERED that [63] the Defendant's Motion for Summary Judgment be, and the same hereby is, granted. The report and recommendation as augmented herein is adopted as the opinion of the court.

Plaintiff's objections are without merit. Each matter raised by plaintiff merely reiterates an argument or construction of the record which was thoroughly considered by the magistrate judge and found to be without merit. The evidence of record is insufficient to support a finding that defendants used excessive force in a malicious and sadistic manner to cause harm or otherwise acted with deliberate indifference as to whether force was being applied in a manner that would produce such a result. See Smith v. Mensinger, 293 F.3d 641, 647-50 (3d Cir. 2002) (in determining whether excessive force was used in the prison environment, the thrust of the inquiry is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.") (quoting Brooks v. Kyler, 204 F.3d 102, 106 (3d Cir. 2000)). In fact, as aptly explained by the magistrate judge in painstaking detail, the evidence of record shows only that defendants used force in a good-faith effort to maintain or restore

order. Consequently, defendants are entitled to summary judgment.

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s/ Davud Stewart Cercone
David Stewart Cercone
United States District Judge

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cc: The Honorable Lisa Pupo Lenihan
      United States Magistrate Judge

      Counsel of Record

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